

NEW YORK STATE  
 DEPARTMENT OF SOCIAL SERVICES  
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243  
 CESAR A. PERALES  
 Commissioner



[An Administrative Directive is a written communication to local Social Services Districts providing directions to be followed in the administration of public assistance and care programs.]

**ADMINISTRATIVE DIRECTIVE**

TRANSMITTAL NO.: 86-ADM-18  
 (Family & Children Services)

TO: Commissioners of Social Services  
 Authorized Agencies

SUBJECT: Notification and Referral for Handicapped Children  
 in Foster Care Who Require Adult Services After Age 21

DATE: June 5, 1986

SUGGESTED DISTRIBUTION:  
 Director of Services  
 All Foster Care Staff  
 All Adult Services Staff

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CONTACT PERSON:

Questions or other inquiries regarding policy issues included in this directive should be addressed to Mr. H. A. Harkess, Senior Social Services Planning Specialist, Division of Family and Children's Services, Room 11-C, 40 North Pearl Street, Albany, New York 12243 or by telephone toll-free to 1-800-342-3715, extension 4-8120. Questions or inquiries relating to operations or programmatic concerns should be addressed to the Regional Office serving the local district or authorized agency as shown in the attachments accompanying this release.

**I. PURPOSE**

The purpose of this release is to provide guidance and direction to local districts and authorized agencies in making required notifications to parents and making appropriate referrals to State agencies or social services districts for a determination of the service needs of handicapped foster children who will need adult services after discharge from foster care. This directive sets forth the notification and referral process requirements for foster children in out-of-state placements and in residential foster care in New York State other than foster family boarding homes. The directive also contains guidelines for local districts and authorized

**FILING REFERENCES**

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous Reference
		18 NYCRR 441.14(b) 441.14(c) 441.14(d)	SSL 398.12 SSL 398.13 SSL 398-c		Chapter 544 Laws of 1982 Chapter 570 Laws of 1983 Chapter 462 Laws of 1984

DSS-296 (1/8/82)

agencies to follow when working with local Committees on the Handicapped regarding referrals of children in foster family homes who are receiving special education services approved by Committees on the Handicapped.

In addition, this directive sets forth the procedures to be followed by local social services officials upon receipt of a referral from a State agency, a Committee on the Handicapped, a multidisciplinary team or another social services district for an evaluation of the need for and/or the appropriateness of providing adult services to a handicapped child when the child attains the age of 21. Local social services officials are also instructed on how to complete annual reports which are required to be submitted to the Department of Social Services.

## II. BACKGROUND

Each year approximately 500 handicapped children who receive foster care in out-of-state placements or in residential foster care within the State reach the age of 18 and begin the process of "aging-out" of foster care. When these children reach the age of 21, many need continuing care and/or adult services. The agencies which provide these services include the Office of Mental Health (OMH) and the Office of Mental Retardation and Developmental Disabilities (OMRDD) in the Department of Mental Hygiene and the Office of Vocational Rehabilitation (OVR) in the State Education Department. In addition, a small number of these "aging-out" foster children will be eligible for adult services provided by local social services districts.

In 1982, the Legislature began the passage of a series of laws designed to ensure notification of parents prior to the cessation of foster care and other services to their handicapped children and to offer them assistance in the form of referrals to those agencies which can determine the need for adult services and which may be most appropriate for providing those services if needed. Chapter 544 of the Laws of 1982 established a process of notification and referral for all handicapped children who are in out-of-state residential foster care placements, who attain the age of 18 and who have been determined by a social services official to need adult services after the age of 21. Chapter 570 of the Laws of 1983 established a similar, though more detailed, procedure for handicapped children in residential foster care and residential schools in New York State (excluding only foster family boarding homes). Chapter 462 of the Laws of 1984 requires that Committees

on the Handicapped provide the same notification and referral services as provided pursuant to Chapter 544 of the Laws of 1982 and Chapter 570 of the Laws of 1983 for handicapped children who have reached the age of 15, who are living at home and receiving care and services in programs approved by the Committees on the Handicapped. Children in foster family homes receiving care and services in a program approved by a Committee on the Handicapped are covered by the provisions of Chapter 462 of the Laws of 1985.

In addition to the notification and referral procedures, these Chapter Laws contain provisions which require action by the Department when we receive referrals from social services districts, from other State agencies, from Committees on the Handicapped, from multidisciplinary teams or from the Council on Children and Families.

As a means of implementing these laws, the Department developed regulations which provide instructions to local districts and to authorized agencies acting on behalf of districts pursuant to purchase of service agreements regarding the notification and referral processes for handicapped children in residential foster care placements who attain the age of 18. Other portions of these regulations authorize social services districts to act as agents of the Department to receive referrals and instruct local districts on how to handle these referrals which come from other districts, from the Council on Children and Families, from the State Education Department, from Committees on the Handicapped or from multidisciplinary teams. These regulations were initially published as subdivisions (c), (d) and (e) of 18 NYCRR 428.9, but, due to recent regulatory amendments, they now appear as subdivisions (b), (c) and (d) of 18 NYCRR 441.14.

Another program which reflects the New York State response to the "aging-out" issue is the transitional care program. Although Chapters 544, 570 and 462 provide for parental notification at a child's 18th birthday (at age 15 under Chapter 462) and thus establish a period in which to develop an appropriate plan for adult care, the present realities of the lack of OMH and OMRDD placement availabilities make it likely that a number of the children referred to these agencies by the Department and/or local social services districts will become eligible for the transitional care program.

The transitional care program provides reimbursement to social services districts for the continued care and maintenance of mentally ill or developmentally disabled persons over the age of 21 who reside in residential child care programs or approved residential schools and who would be eligible to receive services in

a facility operated by OMH or OMRDD but for whom no appropriate placement is currently available. Districts interested in reviewing the specific criteria for the transitional care program should review the series of guidelines issued to local districts over the past 3 years since the program's inception on April 1, 1982.

### III. PROGRAM IMPLICATIONS

The provisions of Chapter 544 of the Laws of 1982, Chapter 570 of the Laws of 1983 and Chapter 462 of the Laws of 1984 apply to handicapped children in out-of-state placements, children in residential foster care facilities in New York State (excluding foster family boarding homes), children in approved residential or State schools, and children in their own homes or foster family boarding homes receiving special education services through Committees on the Handicapped. For those children served by local social services districts and authorized agencies, the regulations implementing Chapters 544 and 570 require that, at the age of 18, the handicapped child's need for services as an adult must be assessed, the parent(s) or guardian of the child must be notified that foster care and/or related services will terminate at age 21 and the parent(s) or guardian must be informed that assistance in determining the likely service needs of the child as an adult may be available upon the request of the parent if the parent consents to the disclosure of relevant records of the child to appropriate State agencies.

Local social services districts are responsible for providing the required notifications and referrals for handicapped children in their care and custody who are in out-of-state placements or in residential foster care in New York State. The parents of foster children who are living in foster family boarding homes and who are receiving services through a local Committee on the Handicapped will receive notifications from the Committee.

It is important to keep in mind that these laws provide only for notification and referral and for the provision of assistance through the Department of Social Services, other State agencies, and the New York State Council on Children and Families in order to make a determination of the need for adult services and in identifying particular agencies or units thereof which may provide those services. To the extent possible, the Department of Social Services, other State agencies and the Council on Children and Families will assist the parent(s) or guardian or the young adult in obtaining needed services but the laws have added no new services, nor any new appropriations for services, nor do the laws establish any mandates for the provision of such services.

The provisions of the three Chapter Laws are treated separately. The implications of each Chapter Law are outlined by area in Section IV. The areas in which districts may combine procedures or information in making the required assessments, notifications and referrals are also covered in Section IV.

#### IV. REQUIRED ACTION

This section outlines the action required of social services districts in order to comply with the requirements of Chapters 544, 570 and 462, Social Services Law Sections 398.12, 398.13 and 398-c and 18 NYCRR 441.14(b), (c) and (d). Copies of the Chapter Laws and the regulations are attached to this release. Where a local district has entered into a purchase of services agreement with an authorized agency for the care of a child, the use of the terms "local district" or "local districts" shall be understood to include an authorized agency acting on behalf of the local district pursuant to that agreement.

##### Out-of-State Placements Notification and Referral (Chapter 544)

Chapter 544 of the Laws of 1982 amended the Social Services Law by adding a new Section 398.12 which established a notification and referral process for handicapped foster children in out-of-state agencies or facilities. 18 NYCRR 441.14(c) implements the provisions of that law which apply to the Department of Social Services and to social services districts.

Local districts having such children in care are required to:

- (1) at the time of the first service plan review following a child's eighteenth birthday, review the child's services and/or treatment plan and determine the probable need of that child for services/treatment when the child reaches 21;
- (2) upon the completion of this review and determination, notify in writing, within 30 days, the parent(s)/guardian of any such children who appear to be in need of services/treatment after the age of 21 that:
  - (a) foster care services and payments under the foster care program will terminate upon the child's twenty-first birthday;
  - (b) the child's assessment shows that he/she appears to be in need of services as an adult;
  - (c) assistance in locating needed services in New York State is available from this Department and other appropriate State agencies; and

- (d) upon request by the parent(s) or guardian and with the parent's or guardian's consent to the release of relevant records and reports, the local district will make a referral to the State Department of Social Services for the purpose of making a more complete assessment of the need for adult services and for possible assistance in locating or obtaining needed services; and
- (3) when the parent(s) or guardian request assistance and consent to the disclosure of records, submit to the Department a report including the assessment of the child's apparent needs for adult services, along with relevant records and reports necessary to assist the Department, the Council on Children and Families and/or relevant State agencies in determining the need for services and locating and obtaining such services.

When the report is received by the Department, it will be forwarded to the Council on Children and Families. The Council will request an appropriate State agency, which may be the Department or a social services district, to develop a recommendation for all appropriate in-state programs operated, licensed, certified or authorized by such agency and which may be available when the child attains the age of 21. This recommendation will be sent to the parent(s) or guardian of the child at least six months before the child's twenty-first birthday.

#### Residential Foster Care Notification and Referral (Chapter 570)

Chapter 570 of the Laws of 1983 amended the Social Services Law by adding a new Section 398.13. That Section established a notification and referral process for handicapped children who are in foster care in residential facilities within New York State. Chapter 570 also amended the Social Services Law by adding a new Section 398-c. Section 398-c set forth the duties of the Department upon receiving a referral from another State agency for the purpose of making a determination as to a child's need for adult services. Chapter 570 also provides that the Commissioner of the Department of Social Services may designate another party to make this determination on his/her behalf. By regulation, the Commissioner has designated local social services officials and local social services districts to act on behalf of the Department to make the necessary assessments, notifications and referrals for children in their care and custody and to receive referrals from other social services districts, the State Education Department, the Council on Children and Families, local Committees on the Handicapped or multidisciplinary teams. The social services

districts will receive these referrals for the purpose of determining whether the adult services needs of the referred child may be met by services approved or provided according to the State's and local district's Comprehensive Service Plan. In recognition of the fact that in many districts the voluntary agency providing care and services to a child pursuant to a purchase of services agreement also maintains the closest contact with the child's family, the regulations also allow for local districts to make the notification and referral process part of the services to be provided by such agencies pursuant to those agreements. 18 NYCRR 441.14(b) and (d) implement these provisions and give specific guidance to local districts and authorized agencies in meeting their responsibilities for these assessments, notifications, referrals and determinations.

The provisions of Chapter 570 and 18 NYCRR 441.14(b) establish a program of notification to the parent(s) or guardian and of referral for assistance of a child who is developmentally disabled, emotionally disturbed or physically handicapped, who is receiving care in a group home, agency boarding home, or any child care facility with a capacity of 13 or more operated by an authorized agency, who attains the age of 18 and who will continue in care after the age of 18. For all such children, the district or an authorized agency acting pursuant to a purchase of services agreement for the care of the child shall:

- (1) at the time of the first service plan review after the child's eighteenth birthday, assess the probable need of the child for services/treatment as an adult;
- (2) within 30 days of the first service plan review following the child's 18th birthday, notify in writing the parent(s) or guardian of the child that:
  - (a) foster care payments and services will terminate when the child reaches the age of 21;
  - (b) the child's assessment shows that he/she appears to be in need of services as an adult;
  - (c) assistance in determining services needed after the age of 21 is available from the Department of Social Services and other appropriate State agencies; and
  - (d) upon the request and written consent of the parent(s) or guardian, a report will be forwarded to an appropriate State agency or social services district for the purpose of determining and recommending services for the child after the age of twenty-one; and

- (3) upon receipt of a parent's or guardian's request for assistance and consent to disclose records and reports, decide which State agency should receive the report for the purposes of making a determination and possible recommendation of needed services in accordance with the criteria on deciding on an agency for referral set forth below in this section.

While neither the legislation nor the regulations specifically require it, the Department encourages local districts to make an annual review coincident with the child's 19th and 20th birthdays and the subsequent service plan review to determine if a reply and/or a consent and request form has been received from the parent(s) or guardian. In those cases where no reply or consent has been received, the district can re-issue the notification letter, along with the accompanying consent and request form, to remind the parent(s) or guardian that foster care services will terminate at age 21 and that referral assistance is available. This additional notification and offer of referral services should be completed following the child's 19th birthday and, if needed, again after his/her 20th birthday.

#### In-Home and Foster Family Care Referrals (Chapter 462)

Chapter 462 of the Laws of 1984 established a notification and referral requirement for local Committees on the Handicapped regarding all children whom a Committee has approved to receive services in non-residential school programs who are receiving special services or programs 100% of the school day, who are receiving individualized attention or intervention because of intensive management needs or a severe handicap and who may need adult services after the age of 21. For all such children, the Committee which has approved such services must, when the child attains age 15, notify the parent(s) or guardian and, where applicable, the student himself when the student reaches age 18, of the date when the child will no longer be eligible for tuition-free services and advise the parent(s), guardian or child of the opportunity and procedure for obtaining from an appropriate State agency a determination of the child's need for adult services and a recommendation of appropriate programs or services which may be available when the child becomes ineligible for free public education.

The provisions of Chapter 462 of the Laws of 1984 are intended to apply to children in foster family boarding homes who meet the criteria for referrals as outlined above. Local districts may need to assist local Committees on the Handicapped to determine whether the notifications should be sent to the parent(s) or guardian or to the child. Where the child's parent(s) or guardian

have an on-going relationship with the child, the parent(s) or guardian will be the party of choice for the notification. Where the child will be discharged to his own care and/or the parent(s) or guardian have not been actively involved with the child, the notification from the Committee on the Handicapped would be most appropriately addressed to the child when the child reaches age 18. In either case, the local social services district with care and custody of the child can assist the Committee on the Handicapped by providing the necessary information and/or recommendation to the Committee.

Making the Notification to the Parent(s)/Guardian Pursuant to Chapters 540 and 570

The notification to the parent(s) or guardian must include a copy of the assessment of the child's need for services after the age of 21 and a copy of a form for the parent(s) or guardian to use in requesting assistance in determining the need for, locating and obtaining adult services and to consent to the release of information to the Department of Social Services and/or other State agencies as a means of obtaining that assistance.

To assist local districts in meeting the notification requirements, a model notification letter and model "Request for Assistance and Authorization for the Release of Information" are attached to and made a part of this release. While local districts may develop their own notification letters and/or releases, their content must parallel the models in order to assure conformity to the requirements of the laws and regulations and to adequately protect the child's and the parent's rights in requesting assistance and in consenting to the release of information to the Department, to the Council on Children and Families and to relevant State agencies which may also assist in locating or providing needed services.

Deciding on Appropriate Agency for Referral

In deciding on the appropriate agency to which to make a referral following receipt of the parent's or guardian's consent and request form, the assessment is to be made by considering the child's primary handicapping condition, in accordance with the following criteria.

- (1) For referral to the Office of Mental Health:
  - (a) the child must exhibit an identifiable mental disorder other than mental retardation, developmental disorders, alcoholism, drug dependence or drug abuse; and
  - (b) the child must have an IQ above 70.

- (2) For a referral to the Office of Mental Retardation and Developmental Disabilities:
  - (a) the child must be diagnosed as having a developmental disability; and
  - (b) the child must have an IQ below 50.
- (3) For any child who meets the criteria of (1) or (2) above, except that his/her IQ is between 50 and 70, the referral shall be made to both the Office of Mental Health and the Office of Mental Retardation and Developmental Disabilities indicating that the child's IQ is between 50 and 70 and that the referral has been submitted to both Offices.

(Note: This is a departure from the present provisions of 18 NYCRR 441.14(b) and reflects an agreement between the Department of Social Services and the Department of Mental Hygiene. Regulations are being amended to reflect this procedure.)

- (4) For a referral to the Office of Vocational Rehabilitation of the State Education Department:
  - (a) the child must have a disability (other than legal blindness) which constitutes or results in a substantial handicap to obtaining and/or maintaining a gainful occupation; and
  - (b) there must be a reasonable expectation that vocational rehabilitation services may benefit the individual in terms of employability.
- (5) For a determination by the district itself or for referral to another social services district:
  - (a) there must appear to be a need for adult services as defined in the Comprehensive Services Plan of the State Department of Social Services; and
  - (b) the child must exhibit none of the criteria which would make the child eligible for referral to the Office of Mental Retardation and Developmental Disabilities, the Office of Mental Health or the Office of Vocational Rehabilitation.

If the assessment is that the local district having care and custody of the child in foster care will make the determination of the need for adult services, the local district shall retain, or the authorized agency acting on its behalf will forward to the local district having care and custody of the child, the referral report along with the parent's or guardian's signed request and consent form. If the family of the child has moved from the district having care and custody of the child, the local district or the authorized agency which made the notification and which received the parent's or guardian's request for assistance and consent shall compile and forward the referral report to the local district in which the family currently resides and/or is expected to reside when the child reaches 21.

Content of Reports to be Submitted with Referrals

Having determined an appropriate State agency or social services district to which to refer the request of the parent(s) or guardian for assistance, the district shall compile the referral report to be sent to that district or agency.

All of these referral reports must contain these items:

- (1) a copy of the written consent of the parent(s) or guardian agreeing to the submission of a referral report for a determination and recommendation of needed services;
- (2) a copy of the assessment portion of the Uniform Case Record which establishes the child's condition and/or need for services, along with copies of the most recent service plan(s); and
- (3) a summary of the child's family/social history.

In addition to these documents which must be part of each referral package, additional materials must be submitted based on which state agency will receive the report.

For referral to the Office of Mental Health, the following additional items must be included in the report:

- (1) copies of the most recent medical history, general physical examination and any psychiatric or psychological evaluations, which address such areas as:

- (a) mental status,
  - (b) diagnosis,
  - (c) history of treatment,
  - (d) medication summary,
  - (e) assessments of intellectual functioning (including IQ) and of sensory motor function,
  - (f) assessment of social-affective functioning
  - (g) self-help skills, and
  - (h) educational/vocational evaluation or summary; and
- (2) other records or reports that will assist the Office of Mental Health to determine the child's need for services.

For referral to the Office of Mental Retardation and Developmental Disabilities, the additional materials to be submitted shall include:

- (1) copies of the most recent medical history, general physical examination and any psychiatric or psychological evaluations which address such areas as:
- (a) mental/developmental status,
  - (b) diagnosis,
  - (c) treatment summary, if applicable, including any specialists' reports,
  - (d) medication summary, if applicable,
  - (e) assessment of intellectual/cognitive functioning (IQ) and of sensory motor functions,
  - (f) assessment of Activities of Daily Living (ADL) skills,
  - (g) assessment/report of behavioral problems,
  - (h) assessment of self-help skills,
  - (i) educational/vocational summary, and
- (2) other records or reports that will assist the Office of Mental Retardation and Disabilities in determining the need for services.

For referral to the Office of Vocational Rehabilitation of the State Education Department, the following additional items must be included in the referral package and report:

- (1) a request to the Office of Vocational Rehabilitation to conduct an evaluation for eligibility determination;

- (2) copies of any records or reports relevant to the need for vocational rehabilitation services, including any completed educational or vocational evaluation(s) or summary;
- (3) copies of the most recent documents showing the child's medical status, medical history, the nature and diagnosis of the child's handicap and the prognosis for its change or recovery; and
- (4) other records or reports that will assist the Office of Vocational Rehabilitation to determine the child's need for and eligibility for services.

For referral to another social services district, these additional items should be submitted as part of the referral report:

- (1) a copy of the most recent Reassessment and Service Plan Review from the Uniform Case Record showing the plan for the child's discharge to or need for adult services;
- (2) a copy of any medical, psychiatric or psychological report(s) which establish the need for adult services; and
- (3) other records or reports which may assist the local social services district in making the determination and recommendation for needed services.

The location of the child's current placement determines where the local district sends these reports. For all children in out-of-state placements, the completed reports are to be sent to the New York State Department of Social Services which will forward the report to the Council on Children and Families. The Council will forward the report to the appropriate state agency.

For children in residential foster care in facilities and programs in New York State, the local districts will submit the referrals directly to the appropriate State agencies or local social services districts. The names and addresses for submitting reports to State agencies are included in attachments to this directive.

At the same time as a local district or authorized agency submits a referral report to one of the State agencies or to another local social services district, an information copy of that referral and report must also be submitted to the Regional Office of the Division of Family and Children's Services serving the district having care and custody of the child being referred. The names and addresses of the Regional Office contacts are included as attachments to this release.

### Dispute Resolution

If, after making a referral to a State agency, the local district or authorized agency is informed by the State agency receiving the referral that that State agency is not responsible or appropriate for making the determination of needed adult services, the local district or agency must review the case in accordance with the criteria contained in this release and the recommendation, if any, received from the State agency to which the report was referred. As a result of this review, the local district or authorized agency may resubmit the referral report to another State agency. If, after submitting the referral report to more than one State agency, the local district or authorized agency has received denials from each of these agencies and thus decides that a dispute exists as to which State agency should be responsible for determining and recommending needed adult services, the local district shall send the referral report, along with a copy of each denial received, to the Council on Children and Families which shall resolve the dispute and/or make a finding as to which State agency will make the determination and recommendation regarding needed adult services.

For disputes between local social services districts regarding the determination of need and recommendation of available services, the process is similar except that the dispute referral is sent to the Department for resolution. If, after making a referral to another social services district, the referral is returned to the district or agency which sent the referral with a denial indicating that the district which received the referral is not the appropriate one to make the determination because the child or family do not or will not reside in that district after the child is 21, the child does not appear to need adult social services, or for any other reason, the district or agency having care and custody of the referred child shall review the case to determine if another social services district should receive the referral. If the district or agency decides that a dispute exists between it and another district or between two other social services districts as to which has responsibility for making the determination of the need for adult social services and recommending applicable programs and services that may be available, the local district shall submit the report, along with the denial(s) from the other district(s), to the Department which shall resolve the dispute by designating the appropriate district to make the determination and recommendation of the need for adult services or by directing that the report be referred to another State agency.

Receipt of Referrals from Other Agencies

Both Chapters 544 and 570 provide that the Department may receive referrals for the purpose of determining the need for adult services and recommending, where appropriate, those programs of adult services provided or approved by the Department under the State's Comprehensive Services Plan. These referrals may be received from the State Education Department, from local Committees on the Handicapped, from multidisciplinary teams, from local social services districts acting as designees of the Department or from the Council on Children and Families. Chapter 462 provides specifically only for referrals by the Committees on the Handicapped to the Office of Mental Retardation and Developmental Disabilities, the Office of Mental Health, and the State Education Department's Office of Vocational Rehabilitation. The Department of Social Services was omitted.

As the present provisions of law established by Chapter 462 do not provide for referrals from SED or Committees on the Handicapped to either the Department or to local social services districts, local districts will not receive any such referrals for determining the need for adult social services. Local districts may review their own foster children receiving care and services approved by a Committee on the Handicapped to determine whether such a child will be in need of and/or eligible for social services provided by the district to adults.

Referrals relating to out-of-state placements (Chapter 544) will be received from the Council on Children and Families. The referral and its accompanying report and documentation will be forwarded to the local district in which the child's family resides or in which the family is likely to reside when the child being referred will attain the age of 21.

Referrals made by Committees on the Handicapped or multidisciplinary teams relating to children receiving care and services in residential schools or State schools (Chapter 570) will be sent by those agencies directly to the local social services district in which the child and/or his family resides or will reside when the child reaches the age of 21. Through its participation in an inter-agency workgroup, the Department has furnished guidelines and directions to the participating State agencies regarding the content of the referral package to be sent to the local district which is to make the determination regarding the need for adult services.

Upon receipt of a referral, the local district will determine whether the child being referred will likely need adult social services, as defined in the Department's Comprehensive Services Plan, and, if it is determined that the child will need such services, develop a recommendation of all appropriate programs or services authorized or operated by the Department or local district which may be available when the child attains the age of 21. The determination that the child needs or does not need adult social services and the recommendation, where applicable, of available programs and services will be sent in writing to the parent(s) or guardian of the child as soon as practicable after the receipt of the referral and in each case no later than six months prior to the child's twenty-first birthday. A copy of the determination and, where applicable, the recommendation sent to the parent(s) or guardian shall also be sent to the office or agency from which the district received the referral. An informational copy of the determination and recommendation, if any, shall be sent to the relevant Regional Office of the Division of Family and Children's Services.

If, after receiving a referral, the local social services district determines that the Department of Social Services (the local district acting as its designee) is not the appropriate State agency for determining and recommending needed adult services, the local district shall promptly notify, in writing, the Committee on the Handicapped, multidisciplinary team, the State Education Department, other social services district or authorized agency which sent the referral. The Department must also be notified of the determination. This notification should state that the Department of Social Services is not the appropriate agency for determining and recommending needed adult services, set forth the basis on which that decision was made, and may recommend, based on the criteria outlined in this section and 18 NYCRR 44.14(b), another State agency as being the appropriate State agency responsible for determining and recommending adult services. As with the determination of the need for adult services, a denial should be made as soon as practicable after receiving the referral report.

#### Annual Reports

The other duty of the local social services district with regard to the notifications and referrals of handicapped children who are "aging-out" of foster care is the completion and submission of an annual report to the Department detailing the actions taken by the social services district regarding such notifications and referrals in the past year. The report shall not refer to personally identifiable information. This report must be submitted to the Department on or before October 1 of each year. The report will cover the period ending on June 30th prior to the report date and shall contain the following information:

- (1) the total number of children whose parent(s) or guardian were notified pursuant to 18 NYCRR 441.14(b) and 441.14(c) that foster care would terminate at age 21 and advising them of the availability of assistance to determine the child's need for adult services and the availability of programs and services to meet that need;
- (2) the total number of children for whom referrals pursuant to Chapter 544 of the Laws of 1982 and 18 NYCRR 441.14(c) and Chapter 570 of the Laws of 1983 and 18 NYCRR 441.14(b) were made;
- (3) the number of referrals for children in out-of-state placements submitted to the Department and the Council on Children and Families, including an aggregate count of the type and severity of the handicapping condition of such children;
- (4) the number of referrals for children in residential foster care facilities or programs in New York State which were submitted to each of the following agencies, indicating for each an assessment of the severity of handicapping conditions in the cases referred:
  - (a) Office of Mental Health;
  - (b) Office of Mental Retardation and Developmental Disabilities;
  - (c) Office of Vocational Rehabilitation, State Education Department;
  - (d) other social services districts;
  - (e) retained by the local district;
- (5) the number of replies from each of the agencies listed in 4(a) through (e) above which deny responsibility for determining the need for adult services;
- (6) the number of cases referred to the Department of Social Services for resolution of disputes between social services districts;
- (7) the number of cases referred to the Council on Children and Families for the resolution of disputes between State agencies, identified by the agencies involved;
- (8) the number of referrals which the local district received from each of the following agencies:
  - (a) State Education Department;
  - (b) Local Committees on the Handicapped;

- (c) Multidisciplinary teams;
  - (d) Council on Children and Families;
  - (e) Other social services districts;
- (9) the number of determinations for the need for adult services completed by the district related to referrals received from the agencies listed in 8(a) through (e) above;
  - (10) the number of referrals returned to the State agency or social services district from which the referral was received as being inappropriate for the district (acting as designee of the Department) to determine;
  - (11) other information that may be requested by the Department as necessary for the Department and/or the Council on Children and Families to monitor the need for adult services.

#### V. EFFECTIVE DATE

The effective dates of the statutory and regulatory provisions included in this directive are as follows:

- (1) The notification and referral requirements for out-of-state placements in Chapter 544 of the Laws of 1982 became effective on and apply to all children who were 18 or who attain the age of 18 on or after July 20, 1982.
- (2) The notification and referral requirements for in-state residential foster care placements in Chapter 570 of the Laws of 1983 became effective on and apply to all handicapped children to whom those provisions apply who were 18 or who attain the age of 18 on or after July 21, 1983.
- (3) The regulations requiring local districts to receive referrals from other districts or State agencies and make determinations of the referred child's need for adult social services and recommendations of available services became effective on May 29, 1985.
- (4) The regulations requiring the local district to submit aggregate reports to the Department were effective for out-of-state placements on July 19, 1983, and for all other residential foster care placements on May 29, 1985.

Local districts which have not already done so are hereby directed that they must comply with the requirements set forth in this directive per the effective dates set forth above.

A handwritten signature in cursive script, reading "Joseph Semidei", is written over a solid horizontal line.

Joseph Semidei  
Deputy Commissioner  
Division of Family and Children's Services

**NYSDSS - REGIONAL OFFICES  
OF THE DIVISION OF FAMILY AND CHILDREN'S SERVICES**

**BUFFALO REGION**

Buffalo Regional Office                      Contact:                      Ms. Karen Schimke  
NYS Department of Social Services                      Director  
125 Main Street, 4th Floor  
Buffalo, New York 14203                      Telephone No:                      716/847-3145

Includes the following counties: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming.

**WESTERN REGION**

Western Regional Office                      Contact:                      Mr. Frank Petrus  
NYS Department of Social Services                      Director  
259 Monroe Avenue  
Monroe Square  
Rochester, New York 14607                      Telephone No:                      716/238-8201

Includes the following counties: Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne and Yates.

**EASTERN REGIONAL OFFICE**

Eastern Regional Office                      Contact:                      Mr. John O'Connor  
NYS Department of Social Services                      Director  
40 North Pearl Street/Annex  
Albany, New York 12243                      Telephone No:                      518/473-1095

Includes the following counties: Albany, Broome, Cayuga, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, St. Lawrence, Tioga, Tompkins, Warren and Washington.

**METROPOLITAN REGIONAL OFFICE**

Metropolitan Regional Office                      Contact:                      Mr. Fred Cantlo  
NYS Department of Social Services                      Director  
2 World Trade Center  
29th Floor  
New York, New York 10047                      Telephone No:                      212/488-3485

Includes the following counties: Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan, Ulster and Westchester, plus New York City.

Dear

This letter is in regard to your son/daughter, \_\_\_\_\_, who is currently in residential foster care. As \_\_\_\_\_ will become twenty-one within the next three years, it has become time to advise you that these foster care services for \_\_\_\_\_ will terminate on his/her twenty-first birthday, to advise you of \_\_\_\_\_'s apparent need for a continuation of services after he/she turns twenty-one and to advise you of available assistance in locating these needed services.

In accordance with Social Services Law and the State Department of Social Services regulations, an assessment of \_\_\_\_\_'s needs has been completed and it appears likely that \_\_\_\_\_ will need services after he/she turns twenty-one. To aid you in locating and possibly obtaining such services the New York State Department of Social Services, other relevant State agencies and the New York State Council on Children and Families have established a program of assistance. To obtain this assistance you must complete a written request which includes your consent to the release of case records, diagnostic reports and other materials relating to your son's/daughter's service needs.

Requesting this assistance is voluntary on your part. You do not have to do so. Also, whether you do or do not make such a request, you are always free to undertake your own efforts to locate and/or obtain any services your son/daughter needs.

In offering this assistance, neither this department nor the State Department of Social Services nor the Council on Children and Families is guaranteeing that the necessary services will be located or obtained, nor that any of these departments or offices nor any other unit of State or local government will pay for such services. Eligibility for and the responsibility for payment for services will depend upon the particular program, facility, agency or source of the services selected for your son/daughter.

To assist you in deciding whether or not to request this assistance, a copy of the assessment of \_\_\_\_\_'s need for services after the age of twenty-one is enclosed. If you decide to request this assistance, you must complete and sign the enclosed "Request for Assistance and Authorization for the Release of Information".

Upon receiving this request, this department will compile a report consisting of the assessment of \_\_\_\_\_'s need for services, your signed request, and a copy of the latest service plan review along with those records, diagnostic reports and other materials which are relevant to locating and/or obtaining the needed services. This report will be submitted to a relevant agency or department of the state for a more complete determination of \_\_\_\_\_'s need for adult services and whether or not that agency or department may provide such services. In certain circumstances, additional assistance in resolving disputes regarding services or an agency's responsibility for determining the need for services will be provided by the State Department of Social Services and/or the New York State Council on Children and Families.

If you make such a request for referral, you will be informed of the results of that referral.

If you have any questions regarding this letter, you may contact \_\_\_\_\_ either by letter or by calling \_\_\_\_\_. The staff of this department shall be happy to assist you in this matter.

Sincerely,

\_\_\_\_\_  
County Department of Social Services

REQUEST FOR ASSISTANCE AND AUTHORIZATION FOR THE RELEASE OF INFORMATION

I/we, \_\_\_\_\_, the undersigned, am/are the parent(s) or legal guardian of \_\_\_\_\_, who is presently receiving residential foster care. I/we have been advised by \_\_\_\_\_ County Department of Social Services that such care and treatment will terminate no later than \_\_\_\_\_'s twenty-first birthday, that \_\_\_\_\_ appears to be in need of adult services after that date, and that assistance is available to help us in locating and/or obtaining such services.

Therefore, I/we hereby request the assistance of the New York State Department of Social Services and the New York State Council on Children and Families to help me/us in locating services for \_\_\_\_\_. I/we give consent to \_\_\_\_\_ County Department of Social Services to release to the New York State Department of Social Services or to any relevant State agency or department, said county's report of the need for services and such documents, data and/or information, including records of current plans and service provision, placement history, medical history, educational history, social history, psychological assessment and psychiatric assessment as that Department or agency may request, as may be necessary for determining the need for and/or obtaining an appropriate program of adult services for \_\_\_\_\_. Such information may include individually and/or personally identifying information such as \_\_\_\_\_'s and/or our name and address, birth date(s), medical condition or Social Security Number or other public assistance data.

In no event shall individual/personally identifiable information be used for any purpose other than for determining the need for or obtaining an appropriate placement or needed services.

I/we may revoke this request consent at any time by notifying the \_\_\_\_\_ County Department of Social Services in writing. I/we recognize that such a revocation will affect the ability of the New York State Department of Social Services or other State agencies to provide the requested assistance in locating or obtaining services for \_\_\_\_\_.

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

WITNESS: \_\_\_\_\_

REFERRALS REGARDING CHILDREN IN OUT-OF-STATE PLACEMENTS  
SHOULD BE ADDRESSED TO:

Deputy Commissioner  
Division for Family and Children's Services  
New York State Department of Social Services  
40 North Pearl Street, Floor 11-A  
Albany, New York 12243  
ATTN: Chapter 544 Referrals

REFERRALS TO THE OFFICE OF MENTAL HEALTH SHOULD BE ADDRESSED  
TO:

Dr. Steven E. Katz, M.D., Commissioner  
New York State Office of Mental Health  
44 Holland Avenue  
Albany, New York 12229

Attention: Mr. James De Lorenzo

REFERRALS TO THE OFFICE OF MENTAL RETARDATION AND  
DEVELOPMENTAL DISABILITIES SHOULD BE ADDRESSED TO:

- (1) Relating to children/families residing in one of the 5 boroughs of New York City:

Mr. Edward Jennings  
Associate Commissioner  
New York City Services Group  
OMRDD  
2 World Trade Center, 56th Floor  
New York, New York 10047

- (2) Relating to children/families residing Upstate or on Long Island:

Dr. Aletha M. H. Baumann  
Assistant Commissioner  
Upstate Community Services Group  
44 Holland Avenue  
Albany, New York 12229

- (3) A copy of each referral package is to be sent at the same time as the above to:

Ms. Barbara Hawes  
Associate Commissioner  
OMRDD  
44 Holland Avenue  
Albany, New York 12229

REFERRALS TO THE OFFICE OF VOCATIONAL REHABILITATION, STATE  
EDUCATION DEPARTMENT SHOULD BE ADDRESSED TO:

Mr. Richard Switzer  
Deputy Commissioner  
Office of Vocational Rehabilitation  
One Commerce Plaza  
99 Washington Avenue  
Albany, New York 12230

Mark the envelope: ATTN: 570 Compliance

REFERRALS TO ANOTHER SOCIAL SERVICES DISTRICT SHOULD BE  
ADDRESSED TO THE COMMISSIONER OF THAT DISTRICT, IN ACCORD WITH  
THE PERIODIC LISTING OF COMMISSIONERS AND ADDRESSES PROVIDED BY  
THE DEPARTMENT TO LOCAL DISTRICTS

REFERRALS TO THE DEPARTMENT OF SOCIAL SERVICES FOR RESOLUTION  
OF DISPUTES BETWEEN LOCAL SOCIAL SERVICES DISTRICTS SHOULD BE  
ADDRESSED TO:

Deputy Commissioner  
Division for Family and Children's Services  
New York State Department of Social Services  
40 North Pearl Street, Floor 11-A  
Albany, New York 12243

REFERRALS BY THE LOCAL DISTRICT REQUESTING DISPUTE RESOLUTION  
BETWEEN STATE AGENCIES SHOULD BE ADDRESSED TO:

Ms. Diane Aman  
New York State Council on Children and Families  
Mayor Erastus Corning the 2nd Tower, 28th Floor  
Empire State Plaza  
Albany, New York 12223

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**HANDICAPPED CHILDREN PLACED OUTSIDE STATE—  
REFERRAL PROCESS FOR SERVICES AS ADULTS**

*Memorandum relating to this chapter, see Executive Memoranda, post*

**CHAPTER 544**

Approved and effective July 20, 1982

AN ACT to amend the education law and the social services law, in relation to the establishment of a referral process for handicapped children returning to New York state for adult services

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision one of section forty-four hundred seven of the education law, as added by chapter eight hundred fifty-three of the laws of nineteen hundred seventy-six, is amended to read as follows:

1. a. When it shall appear to the satisfaction of the department that a handicapped child, who, in the judgement of the department can reas-

deletions by [brackets]

onably be expected to benefit from instruction, is not receiving such instruction because there are no appropriate public or private facilities for instruction of such a child within this state because of the unusual type of the handicap or combination of handicaps as certified by the commissioner, the department is authorized to contract with an educational facility located outside the state, which, in the judgement of the department, can meet the needs of such child, for instruction of such child in such educational facility, and the department is further authorized to expend for such purpose a sum not exceeding the allowable tuition charges per eligible pupil at such educational facilities as determined by the commissioner of education and approved by the director of the budget.

b. When a child, who is placed pursuant to this article in an educational facility located outside the state, attains the age of eighteen, the school district of which such child is a resident shall notify the child's parent or guardian in writing that the child will not be entitled to receive tuition free educational services after the age of twenty-one or after the time described in subdivision five of section forty-four hundred two of this chapter, whichever is later. If a child is over the age of eighteen when placed pursuant to this article in an educational facility located outside the state, such notice shall be made at the time of placement.

c. Written notice given pursuant to paragraph b of this subdivision shall describe in detail the parent's or guardian's opportunity to consent to having the child's name and other relevant information forwarded to the department for the purpose of determining whether such child will need services after the age of twenty-one and, if such need exists, planning and coordinating the child's return to New York state for adult services. For the purposes of this subdivision relevant information shall be defined as that information in the possession of and used by the school district to ascertain the physical, mental, emotional and cultural-educational factors which contribute to the child's handicapping condition, including but not limited to: results of physical and psychological examinations performed by private and school district physicians and psychologists; relevant information presented by the parent, guardian and teacher; school data which bear on the child's progress including the child's most recent individualized education program; results of the most recent examinations and evaluations performed pursuant to clause (d) of subparagraph three of paragraph b of subdivision one of section forty-four hundred two of this article; and results of other suitable evaluations and examinations possessed by the school district. Nothing in this subdivision shall be construed to require any school district to perform any examination or evaluation not otherwise required by law.

d. Upon the written consent of the parent or guardian, the department shall submit the relevant information received pursuant to paragraph c of this subdivision to the council on children and families on such child's need for service after age twenty-one for planning purposes.

e. When the relevant information is submitted to the council on children and families pursuant to this subdivision, the council shall cooperate with adult service providers, such as the department of social services, the office of mental retardation and developmental disabili-

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ties, the office of mental health and the office of vocational rehabilitation of the education department in determining whether such child will need services after the age of twenty-one and, if such need exists, planning and coordinating such child's return to New York state for adult services. The council shall arrange with the appropriate state agency for the development of a recommendation of all appropriate in-state programs operated, licensed, certified or authorized by such agency which may be available when such child attains the age of twenty-one. Such recommendation of all programs shall be made available to the parent or guardian of such child at least six months before such child attains the age of twenty-one. All records, reports and information received, compiled or maintained by the council pursuant to this subdivision shall be subject to the confidentiality requirements of the department.

§ 2. Section three hundred ninety-eight of the social services law is amended by adding a new subdivision twelve to read as follows:

12. (a) In the case of a child with a handicapping condition who is placed, pursuant to this chapter, in a foster care agency or institution located outside the state, and who attains the age of eighteen, the social services official shall:

(i) determine whether such child will need services after the age of twenty-one, and, if such need exists;

(ii) assess the nature of the services required;

(iii) notify the parent or guardian of such child's need for services; and

(iv) upon the written consent of the parent or guardian, and notwithstanding section three hundred seventy-two of this article, submit a report on the child's need for services after age twenty-one to the department for planning purposes.

(b) Upon the written consent of the parent or guardian, the department shall submit the report received pursuant to paragraph (a) of this subdivision to the council on children and families.

(c) When a child's report is submitted to the council on children and families pursuant to this subdivision, the council shall cooperate with adult service providers, such as the department of social services, the office of mental retardation and developmental disabilities, the office of mental health and the office of vocational rehabilitation of the education department in planning and coordinating such child's return to New York state for adult services. The council shall arrange with the appropriate state agency for the development of a recommendation of all appropriate in-state programs operated, licensed, certified or authorized by such agency and which may be available when such child attains the age of twenty-one. Such recommendation of all programs shall be made available to the parent or guardian of such child at least six months before such child attains the age of twenty-one. All records, reports and information received, compiled or maintained by the council pursuant to this subdivision shall be subject to the confidentiality requirements of the department.

§ 3. The commissioner of education, in consultation with the commissioners of the department of social services, the office of mental health and the office of mental retardation and developmental disabilities; and the commissioner of social services in consultation with the

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commissioners of education, the office of mental health and the office of mental retardation and developmental disabilities shall promulgate rules and regulations as are appropriate to implement this act which shall provide for, but not be limited to: the identification of children placed out-of-state, the manner and format of the determination and assessment for services after age twenty-one, the notification and consent of the parent or guardian and, in consultation with the council on children and families, the form and content of the report filed with the council.

§ 4. This act shall take effect immediately.

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REFERRAL OF HANDICAPPED CHILDREN  
FOR ADULT SERVICES

Memoranda relating to this chapter, see Legislative and Executive Memoranda, post

CHAPTER 570

Approved and effective July 21, 1983

AN ACT to amend the education law, the social services law, the mental hygiene law and the executive law, in relation to the referral of handicapped children for adult services

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph b of subdivision one of section four thousand four hundred two of the education law is amended by adding a new subparagraph five to read as follows:

5. The committee on the handicapped or, in the case of a state or state supported school, the multidisciplinary team shall provide written notice that a child who is placed in those residential programs specified in paragraphs d, g and l of subdivision two of section four thousand four hundred one of this article is not entitled to receive tuition free educational services after the age of twenty-one, the receipt of a high school diploma or the time described in subdivision five of this section. Such written notice shall be provided to the parents or legal guardian of such child when such child attains the age of eighteen or, if such child is over the age of eighteen when placed in such a residential program, at the time of placement. The commissioner shall designate the committee responsible for carrying out the provisions of this subparagraph.

(a) Written notice given pursuant to this subparagraph shall describe in detail the parent's or guardian's opportunity to consent to having the child's name and other relevant information forwarded in a report to the commissioner of mental health, commissioner of mental retardation and developmental disabilities, commissioner of social services, or commissioner of education or their designees for the purpose of determining whether such child will likely need services after the age of twenty-one and, if so, recommending possible adult services. For the purposes of this subparagraph "relevant information" shall be defined as that information in the possession of and used by the committee or the multidisciplinary team to ascertain the physical, mental, emotional and cultural-educational factors which contribute to the child's handicapping condition, including but not limited to: (i) results of physical and psychological examinations performed by private and school district physicians and psychologists; (ii) relevant information presented by the parent, guardian and teacher; (iii) school data which bear on the child's progress including the child's most recent individualized education program; (iv) results of the most recent examinations and evaluations performed pursuant to clause (d) of subparagraph three of this

paragraph; and (v) results of other suitable evaluations and examinations possessed by the committee. Nothing in this clause shall be construed to require any committee or multidisciplinary team to perform any examination or evaluation not otherwise required by law.

(b) Upon the written consent of the parent or legal guardian, the committee or multidisciplinary team shall forward the child's name and other relevant information in a report to the commissioner of mental health, commissioner of mental retardation and developmental disabilities, commissioner of social services or commissioner of education or their designees for the development of a recommendation for adult services pursuant to section 7.37 or 13.37 of the mental hygiene law, section three hundred ninety-eight-c of the social services law or subdivision ten of section four thousand four hundred three of this article. The committee or multidisciplinary team shall determine which commissioner shall receive the report by considering the child's handicapping condition and physical, mental, emotional and social needs.

(c) A copy of such report shall also be submitted to the state education department at the same time that such report is submitted to the commissioner of mental health, commissioner of mental retardation and developmental disabilities or commissioner of social services or their designees.

(d) When the committee or multidisciplinary team is notified by the commissioner who received the report that such state agency is not responsible for determining and recommending adult services for the child, the committee or multidisciplinary team shall forward the report to another commissioner; or, if the committee or multidisciplinary team determines that there exists a dispute as to which state agency has the responsibility for determining and recommending adult services, the committee or multidisciplinary team may forward the report to the council on children and families for a resolution of such dispute.

(e) The committee and multidisciplinary team shall prepare and submit an annual report to the state education department on October first, nineteen hundred eighty-four and thereafter on or before October first of each year. Such annual report shall contain the number of cases submitted to each commissioner pursuant to clause (b) of this subparagraph, the type and severity of the handicapping condition involved with each such case, the number of notices received which deny responsibility for determining and recommending adult services, and other information necessary for the state education department and the council on children and families to monitor the need for adult services. Such annual report shall not contain individually identifying information. The state education department shall forward a copy of such annual report to the council on children and families. All information received by the council on children and families pursuant to this clause shall be subject to the confidentiality requirements of the department.

§ 2. Section four thousand four hundred three of such law is amended by adding a new subdivision ten to read as follows:

10. a. The commissioner shall determine whether a child, whose report is submitted to the department pursuant to clause (b) of subparagraph five of paragraph b of subdivision one of section forty-four hundred two of this article or subdivision thirteen of section three hundred ninety-eight of the social services law, will likely need adult services and, if such need will likely exist, develop a recommendation of all appro-

priate programs operated or approved by the department which may be available when the child attains the age of twenty-one. If necessary and appropriate, the commissioner may conduct an evaluation of the child to determine if adult services will be needed. Such recommendation of all programs shall be made available to the parent or guardian of such child as soon as practicable but no later than six months before such child attains the age of twenty-one.

b. If the commissioner determines, pursuant to paragraph a of this subdivision, that such child will not require adult services, the commissioner shall notify the child's parent or guardian in writing of such determination. Such notice shall be given as soon as practicable but no later than six months before the child attains the age of twenty-one.

c. Notwithstanding paragraphs a and b of this subdivision, the commissioner may determine that the education department is not responsible for determining and recommending adult services for such child. When such a determination is made it shall be made as soon as practicable after receiving the report and the commissioner shall promptly notify in writing the committee on the handicapped, multidisciplinary team or social services official who sent the report that such determination has been made. Such notice shall state the reasons for the determination and may recommend a state agency which may be responsible for determining and recommending adult services.

d. Nothing in this subdivision shall be construed to create an entitlement to adult services.

e. A designee of the commissioner may carry out the functions of the commissioner described in this subdivision.

§ 3. Section three hundred ninety-eight of the social services law is amended by adding a new subdivision thirteen to read as follows:

13. (a) In the case of a child who is developmentally disabled as such term is defined in section 1.03 of the mental hygiene law, emotionally disturbed or physically handicapped and who is receiving care in a group home, agency boarding home, or any child care facility operated by an authorized agency with a capacity of thirteen or more children, who attains the age of eighteen and who will continue in such care after the age of eighteen, or who is placed in such care after the age of eighteen, the social services official shall notify the parent or guardian of such child that such care will terminate when such child attains the age of twenty-one. Such notice shall be in writing and shall describe in detail the parent's or guardian's opportunity to consent to having such child's name and other information forwarded in a report to the commissioner of mental health, commissioner of mental retardation and developmental disabilities, commissioner of education or commissioner of social services or their designees for the purpose of determining whether such child will likely need services after the age of twenty-one and, if so, recommending possible adult services.

(b) Upon the written consent of the parent or guardian, and notwithstanding section three hundred seventy-two of this article, the social services official shall submit a report on such child's possible need for services after age twenty-one to the commissioner of mental health, commissioner of mental retardation and developmental disabilities, commissioner of social services or commissioner of education or their designees for the development of a recommendation pursuant to section 7.37 or 13.37 of the mental hygiene law, section three hundred

ninety-eight-c of this article or subdivision ten of section four thousand four hundred three of the education law. The social services official shall determine which commissioner shall receive the report by considering the child's handicapping condition. If the social services official determines that the child will need adult services from the department and such social services official is the commissioner's designee pursuant to this subdivision and section three hundred ninety-eight-c of this article, such social services official shall perform the services described in section three hundred ninety-eight-c of this article.

(c) A copy of such report shall also be submitted to the department at the same time that such report is submitted to the commissioner of mental health, commissioner of mental retardation and developmental disabilities or commissioner of education or their designees.

(d) When the social services official is notified by the commissioner who received the report that such state agency is not responsible for determining and recommending adult services for the child, the social services official shall forward the report to another commissioner; or, if the social services official determines that there exists a dispute between state agencies as to which state agency has the responsibility for determining and recommending adult services, the social services official may forward the report to the council on children and families for a resolution of such dispute.

(e) The social services official shall prepare and submit an annual report to the department on October first, nineteen hundred eighty-four and thereafter on or before October first of each year. Such annual report shall contain the number of cases submitted to each commissioner pursuant to paragraph (b) of this subdivision, the type and severity of the handicapping condition of each such case, the number of notices received which deny responsibility for determining and recommending adult services, and other information necessary for the department and the council on children and families to monitor the need for adult services, but shall not contain personally identifying information. The department shall forward copies of such annual reports to the council on children and families. All information received by the council on children and families pursuant to this paragraph shall be subject to the confidentiality requirements of the department.

§ 4. Such law is amended by adding a new section three hundred ninety-eight-c to read as follows:

§ 398-c. Powers and duties of the commissioner in relation to children. 1. The commissioner shall determine whether a child, whose report is submitted to the department pursuant to subparagraph five of paragraph b of subdivision one of section forty-four hundred two of the education law or subdivision thirteen of section three hundred ninety-eight of this article, will likely need adult services and, if such need will likely exist, develop a recommendation of all appropriate programs authorized or operated by the department which may be available when the child attains the age of twenty-one. If necessary and appropriate, the commissioner may conduct an evaluation of the child to determine if adult services will be necessary. Such recommendation of all programs shall be made available to the parent or guardian of such child as soon as practicable but no later than six months before such child attains the age of twenty-one.

2. If the commissioner determines pursuant to subdivision one of this section, that such child will not require adult services, the commissioner shall notify the child's parent or guardian in writing of such determination. Such notice shall be given as soon as practicable but no later than six months before the child attains the age of twenty-one.

3. Notwithstanding subdivisions one and two of this section, the commissioner may determine that the department is not responsible for determining and recommending adult services for such child. When such a determination is made it shall be made as soon as practicable after receiving the report and the commissioner shall promptly notify in writing the committee on the handicapped, multidisciplinary team or social services official who sent the report that such determination has been made. Such notice shall state the reasons for the determination and may recommend a state agency which may be responsible for determining and recommending adult services.

4. Nothing in this section shall be construed to create an entitlement to adult services.

5. A designee of the commissioner may carry out the functions of the commissioner described in this section.

§ 5. The mental hygiene law is amended by adding two new sections 7.37 and 13.37 to read as follows:

§ 7.37 Powers of the office and commissioner in relation to the planning and referral of mentally ill children for adult services.

(a) As used in this section:

1. "report" means a report submitted to the office pursuant to subparagraph five of paragraph b of subdivision one of section four thousand four hundred two of the education law or subdivision thirteen of section three hundred ninety-eight of the social services law.

2. "child" means the child who is the subject of a report.

3. "local governmental unit" means a governmental unit as defined and used in article forty-one of this chapter.<sup>1</sup>

4. "voluntary agency" shall have the same meaning as that used in article forty-one of this chapter.

(b) Upon receipt of a report, the commissioner shall review the report to determine if the child will likely need adult services. If necessary and appropriate, the commissioner may conduct an evaluation of the child to determine if adult services will be needed. If the child will likely need adult services, the commissioner shall identify in a written recommendation those programs or services which may be available when the child attains the age of twenty-one and which are operated or licensed by the office and by the local governmental unit of the county in which the child resides, or in the event that the child resides in a county within the city of New York, the local governmental unit of the city of New York. Such written recommendation shall be made available to the child's parents or guardian as soon as practicable but not later than six months before the child attains the age of twenty-one.

(c) If the commissioner determines, pursuant to subdivision (b) of this section, that such child will not require adult services, the commissioner shall notify the child's parent or guardian in writing of such determination. Such notice shall be given as soon as practicable but no later than six months before the child attains the age of twenty-one.

(d) Notwithstanding subdivisions (b) and (c) of this section, the commissioner may determine that the office is not responsible for determin-

ing and recommending adult services for the child. When such a determination is made it shall be made as soon as practicable after receiving the report and the commissioner shall promptly notify in writing the committee on the handicapped, multidisciplinary team or social services official who sent the report that such determination has been made. Such notice shall state the reasons for the determination and may recommend a state agency which may be responsible for determining and recommending adult services.

(e) The commissioner may designate any qualified employee of the office or any psychiatric center to carry out the functions described in subdivisions (b), (c) and (d) of this section. The commissioner may enter agreements with local governmental units and voluntary agencies to provide the services described in subdivisions (b), (c) and (d) of this section. Consistent with these agreements, the commissioner may designate a local governmental unit or voluntary agency to carry out the functions of the commissioner described in this section and the local governmental unit or voluntary agency shall perform those functions.

(f) All information received by a local governmental unit or voluntary agency pursuant to this section shall be subject to the confidentiality requirements of the office.

(g) Nothing in this section shall be construed to create an entitlement to adult services.

<sup>1</sup> Mental Hygiene Law § 41.01 et seq.

§ 13.37 Powers of the office and commissioner in relation to the planning and referral of mentally retarded and developmentally disabled children for adult services.

(a) As used in this section:

1. "report" means a report submitted to the office pursuant to subparagraph five of paragraph b of subdivision one of section four thousand four hundred two of the education law or subdivision thirteen of section three hundred ninety-eight of the social services law.

2. "child" means the child who is the subject of a report.

3. "local governmental unit" means a governmental unit as defined and used in article forty-one of this chapter.<sup>1</sup>

4. "voluntary agency" shall have the same meaning as that used in article forty-one of this chapter.

(b) Upon receipt of a report, the commissioner shall review the report to determine if the child will likely need adult services. If necessary and appropriate, the commissioner may conduct an evaluation of the child to determine if adult services will be needed. If the child will likely need adult services, the commissioner shall identify in a written recommendation those programs or services which may be available when the child attains the age of twenty-one and which are operated or licensed by the office and by the local governmental unit of the county in which the child resides, or in the event that the child resides in a county within the city of New York, the local governmental unit of the city of New York. Such written recommendation shall be made available to the child's parents or guardian as soon as practicable but no later than six months before the child attains the age of twenty-one.

(c) If the commissioner determines, pursuant to subdivision (b) of this section, that such child will not require adult services, the commissioner shall notify the child's parent or guardian in writing of such determination. Such notice shall be given as soon as practicable but no later than six months before the child attains the age of twenty-one.

(d) Notwithstanding subdivisions (b) and (c) of this section the commissioner may determine that the office is not responsible for determining and recommending adult services for the child. When such a determination is made it shall be made as soon as practicable after receiving the report and the commissioner shall promptly notify in writing the committee on the handicapped, multidisciplinary team or social services official who sent the report that such determination has been made. Such notice shall state the reasons for the determination and may recommend a state agency which may be responsible for determining and recommending adult services.

(e) The commissioner may designate any qualified employee of the office to carry out the functions described in subdivisions (b), (c) and (d) of this section. The commissioner may enter agreements with local governmental units and voluntary agencies to provide the services described in subdivisions (b), (c) and (d) of this section. Consistent with these agreements, the commissioner may designate a local governmental unit or voluntary agency to carry out the functions of the commissioner described in this section and the local governmental unit or voluntary agency shall perform those functions.

(f) All information received by a local governmental unit or voluntary agency pursuant to this section shall be subject to the confidentiality requirements of the office.

(g) Nothing in this section shall be construed to create an entitlement to adult services.

<sup>1</sup> Mental Hygiene Law § 41.01 et seq.

§ 6. Subdivision five of section four hundred forty-four of the executive law is amended by adding a new paragraph (e) to read as follows:

(e) A dispute relative to which member agency shall have the responsibility for determining and recommending adult services pursuant to sections 7.37 and 13.37 of the mental hygiene law, section three hundred ninety-eight-c of the social services law, or subdivision ten of section four hundred forty-four of the education law shall be resolved in accordance with this subdivision.

§ 7. The commissioners of education, department of social services, office of mental health, and office of mental retardation and developmental disabilities and the executive director of the council on children and families, in consultation with one another, shall promulgate, within six months from the date that this act shall take effect, rules and regulations as are appropriate to implement this act. Such regulations shall provide that the notices and reports required by this act shall, to the extent possible, be compatible among such state agencies.

§ 8. This act shall take effect immediately.

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**HANDICAPPED CHILD RECEIVING NON-RESIDENTIAL  
SPECIAL SERVICES—DETERMINATION OF  
NEED FOR ADULT SERVICES**

*Memoranda relating to this chapter, see Legislative and Executive Memoranda, post*

**CHAPTER 462**

Approved July 23, 1984, effective as provided in section 6

ACT to amend the education law and the mental hygiene law, in relation to the referral of handicapped children for adult services

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph b of subdivision one of section four thousand four hundred two of the education law is amended by adding a new subparagraph six to read as follows:

(6) Upon the first annual review after the age of fifteen of a child who: is receiving non-residential special services or programs as specified in paragraph a, b, c, e, f, i, j or l of subdivision two of section four thousand four hundred one of this article; is receiving such special services or programs one hundred per centum of the school day; is receiving individualized attention or intervention because of intensive management needs or a severe handicap; and, may need, as determined by the committee on the handicapped pursuant to regulations promulgated by the commissioner of education, adult services from the office of mental health, office of mental retardation and developmental disabilities or the state education department, the committee shall provide written notice to such child's parent or guardian that such child is not entitled to receive tuition free educational services after the receipt of a high school diploma, the age of twenty-one or the time described in subdivision five of this section.

(a) Written notice given pursuant to this subparagraph shall describe in detail the parent's or guardian's opportunity to consent to having the child's name and other relevant information forwarded in a report to the commissioner of mental health, commissioner of mental retardation

and developmental disabilities or commissioner of education or their designees for the purpose of determining whether such child will likely need adult services and, if so, recommending possible adult services. For the purposes of this subparagraph "relevant information" shall be defined as that information in the possession of and used by the committee to ascertain the physical, mental, emotional and cultural-educational factors which contribute to the child's handicapping condition, including but not limited to: (i) results of physical and psychological examinations performed by private and school district physicians and psychologists; (ii) relevant information presented by the parent, guardian and teacher; (iii) school data which bear on the child's progress including the child's most recent individualized education program; (iv) results of the most recent examinations and evaluations performed pursuant to clause (d) of subparagraph three of this paragraph; and (v) results of other suitable evaluations and examinations possessed by the committee. Nothing in this subparagraph shall be construed to require any committee to perform any examination or evaluation not otherwise required by law.

(b) Upon the written consent of the parent or guardian, the committee shall forward the child's name and other relevant information, in a report to the commissioner of mental health, commissioner of mental retardation and developmental disabilities or commissioner of education or their designees for the development of a recommendation for adult services pursuant to section 7.37 or 13.37 of the mental hygiene law or subdivision ten of section four thousand four hundred three of this article. The committee shall determine which commissioner shall receive the report by considering the child's handicapping condition and physical, mental, emotional and social needs. The committee shall forward additional and updated relevant information to the commissioner of mental health, commissioner of mental retardation and developmental disabilities or commissioner of education or their designees upon the request for such information by such commissioner or designee and upon obtaining appropriate consent.

(c) A copy of such report shall also be submitted to the state education department at the same time that such report is forwarded to the commissioner of mental health or commissioner of mental retardation and developmental disabilities or their designee.

(d) When the committee is notified by the commissioner who received the report that such state agency is not responsible for determining and recommending adult services for the child, the committee shall forward the report to another commissioner; or, if the committee determines that there exists a dispute as to which state agency has the responsibility for determining and recommending adult services, the committee may forward the report to the council on children and families for a resolution of such dispute.

(e) The committee shall prepare and submit an annual report to the state education department on October first, of each year. Such annual report shall contain the number of cases submitted to each commissioner pursuant to clause (b) of this subparagraph, the type and severity of the handicapping condition involved with each such case, the number of notices received which deny responsibility for determining and recommending adult services, and other information necessary for the state education department and the council on children and families to monitor the need for adult services. Such annual report shall not contain indiv-

idually identifying information. The state education department shall forward a copy of such annual report to the council on children and families. All information received by the council on children and families pursuant to this clause shall be subject to the confidentiality requirements of the department.

§ 2. Paragraph a of subdivision ten of section four thousand four hundred three of such law, as added by chapter five hundred seventy of the laws of nineteen hundred eighty-three, is amended to read as follows:

a. The commissioner shall determine whether a child, whose report is submitted to the department pursuant to clause (b) of subparagraph five or six of paragraph b of subdivision one of section forty-four hundred two of this article or subdivision thirteen of section three hundred ninety-eight of the social services law, will likely need adult services and, if such need will likely exist, develop a recommendation of all appropriate adult programs operated or approved by the department which may be available [when the child attains the age of twenty-one]. If necessary and appropriate, the commissioner may conduct an evaluation of the child to determine if adult services will be needed. Such recommendation of all programs shall be made available to the parent or guardian of such child as soon as practicable but no later than six months before such child attains the age of twenty-one.

§ 3. Subdivisions (a) and (b) of section 7.37 of the mental hygiene law, as added by chapter five hundred seventy of the laws of nineteen hundred eighty-three, are amended to read as follows:

(a) As used in this section:

1. "report" means a report submitted to the office pursuant to subparagraph five or six of paragraph b of subdivision one of section four thousand four hundred two of the education law or subdivision thirteen of section three hundred ninety-eight of the social services law.
2. "child" means the child who is the subject of a report.
3. "local governmental unit" means a governmental unit as defined and used in article forty-one of this chapter.<sup>1</sup>
4. "voluntary agency" shall have the same meaning as that used in article forty-one of this chapter.

(b) Upon receipt of a report, the commissioner shall review the report to determine if the child will likely need adult services. If necessary and appropriate, the commissioner may conduct an evaluation of the child to determine if adult services will be needed. If the child will likely need adult services, the commissioner shall identify in a written recommendation those adult programs or services which may be available [when the child attains the age of twenty-one] and which are operated or licensed by the office and by the local governmental unit of the county in which the child resides, or in the event that the child resides in a county within the city of New York, the local governmental unit of the city of New York. Such written recommendation shall be made available to the child's parents or guardian as soon as practicable but not later than six months before the child attains the age of twenty-one.

<sup>1</sup> Mental Hygiene Law § 41.01 et seq.

§ 4. Subdivisions (a) and (b) of section 13.37 of such law, as added by chapter five hundred seventy of the laws of nineteen hundred eighty-three, are amended to read as follows:

(a) As used in this section:

1. "report" means a report submitted to the office pursuant to subparagraph five or six of paragraph b of subdivision one of section four

thousand four hundred two of the education law or subdivision thirteen of section three hundred ninety-eight of the social services law.

2. "child" means the child who is the subject of a report.

3. "local governmental unit" means a governmental unit as defined and used in article forty-one of this chapter.<sup>1</sup>

4. "voluntary agency" shall have the same meaning as that used in article forty-one of this chapter.

(b) Upon receipt of a report, the commissioner shall review the report to determine if the child will likely need adult services. If necessary and appropriate, the commissioner may conduct an evaluation of the child to determine if adult services will be needed. If the child will likely need adult services, the commissioner shall identify in a written recommendation those adult programs or services which may be available [when the child attains the age of twenty-one] and which are operated or licensed by the office and by the local governmental unit of the county in which the child resides, or in the event that the child resides in a county within the city of New York, the local governmental unit of the city of New York. Such written recommendation shall be made available to the child's parents or guardian as soon as practicable but no later than six months before the child attains the age of twenty-one.

<sup>1</sup> Mental Hygiene Law § 41.01 et seq.

§ 5. The commissioners of education, office of mental health, and office of mental retardation and developmental disabilities and the executive director of the council on children and families, in consultation with one another, shall promulgate, within one hundred eighty days after this act shall have become a law, rules and regulations as are appropriate to implement this act. Such regulations shall provide that the notices and reports required by this act shall, to the extent possible, be compatible among such state agencies.

§ 6. This act shall take effect on the one hundred eightieth day after it shall have become a law.